Confl. Laws, 6th ed., § 379. It has not been allowed to prevent the taxation of tangible property physically within the jurisdiction. *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 224, 228. The trouble is, as Vann, J. says (p. 711), that intangible property has ever been perplexing "because it has no physical presence. . . . It may exist, as it were, in the air. . . . Such rights are ordinarily regarded as attached to the person of the owner, but they are not inseparable from him, because creditors are permitted to seize them. . . . There is nothing, therefore, in the nature of the most intangible right . . . to prevent the legislature from giving it a *situs* apart from the residence of its owner," provided it has "some practical existence in the State that assumes jurisdiction." This seems the sound view. The analogy of jurisdiction in garnishment proceedings appears to be perfect. The answer (see the *Houdayer* case, 38 N. Y. Supp. 323, 325), that jurisdiction over the debtor is not jurisdiction over the debt, because the tax law creates the obligation which is enforced, while in attachment of a debt only an existing obligation is enforced, is not satisfactory, whether or not garnishment is viewed as a proceeding *in rem.*

On principle, there appears to be no real distinction between the power to tax the bonds in the *Bronson* case and the power to tax interest which a domestic corporation pays to its foreign bondholders. The Supreme Court was divided five to four in holding that Pennsylvania could not impose such a tax as impairing the obligation of contracts. *State Tax on Foreign-held Bonds*, 15 Wall. 300. Mr. Justice Vann's distinction between a tax on the right of succession and a tax on property does not seem to meet the question squarely, where the power to tax the right of succession depends upon jurisdiction over the thing inherited.

The *Whiting* case, *supra*, rests upon a different principle. In the *Foreign-held Bond* case (p. 324) it was said that state and municipal bonds, by usage, and a bank's circulating notes, because treated as money, are so far tangible property that they may be taxed where found. See Dos Passos, Inh. Tax, 2d ed., 65. With this principle once established, that the documentary evidence of intangible property may be treated as tangible property, it becomes a question of fact whether usage has gone far enough to justify its application. There may easily be a difference of opinion in a given case, and yet one would hardly say a decision either way was wrong. When this characteristic has become attached to any kind of intangible property, it is a question whether it can consistently be held that the character of intangible property remains so that the property can be reached through the debtor.

RECENT CASES.

BILLS AND NOTES — CERTIFICATION OF NOTE BY BANK — PAYMENT. — Defendant, holder of a note payable at the plaintiff bank, caused it to be presented for certification. A few days after certifying the note, plaintiff discovered that it did not possess funds of the maker sufficient to pay it, and requested that the note be withheld from the clearing house. The note was not withheld, however, and the clearing-house bank of the plaintiff was obliged by the rules of the clearing house to pay it, as an item against a bank for which it cleared. *Held*, that plaintiff could not recover the amount

as paid under a mistake of fact. *Riverside Bank* v. *First National Bank of Shenandoah* 74 Fed. Rep. 276.

The courts of Massachusetts and New York allow recovery in such cases, but the weight of authority is against it. See, for cases and full discussion, 4 HARVARD LAW REVIEW, 305. The principal case is undoubtedly right in leaving the loss where it fell without defendant's fault, and in clearly recognizing the fact that certification is as final as the payment of money. The one cannot be rescinded and the other cannot be recovered.

BILLS AND NOTES — FORGED INDORSEMENT. — The plaintiff deposited a check for collection with the defendant bank. The check was paid by the bank on which it was drawn, but it afterwards turned out that a prior indorsement had been forged, without the plaintiff's knowledge, and the defendant refunded the amount to the drawee. *Held*, the defendant could apply any fund of the plaintiff afterwards coming into its possession to reimburse itself, although at the time of refunding the money it had not notified the plaintiff of the forgery. *Green* v. *Purcell Bank*, 37 S. W. Rep. 50. (Ind. Ter.)

The case is important as involving the point that money paid on a check containing a forged indorsement can be recovered back by the drawee, for unless there was such legal right of recovery the defendant would not have been entitled to charge the plaintiff, who indorsed to it. That this is the correct view seems evident (see 4 HARVARD LAW REVIEW, 297, 307), but the Queen's Bench Division has recently reached a directly opposite conclusion. *London Bank* v. *Bank of Liverpool*, [1896] 1 Q. B. 7. See 9 HARVARD LAW REVIEW, 480.

BILLS AND NOTES — NEGOTIABILITY — CERTAINTY AS A REQUISITE. — A mortgage contained a provision that if the mortgagor should leave any taxes unpaid for thirty days, such taxes, and the principal and interest of the note accompanying the mortgage, should at once become payable. *Held*, that the note was non-negotiable on account of uncertainty in the amount payable on it. *Brooke* v. *Struthers*, 68 N. W. Rep. 272 (Mich.). See NOTES.

CARRIERS — NEGLIGENT DELAY — LIABILITY FOR CONSEQUENTIAL DAMAGE. — *Held*, that a carrier is not liable for special damage resulting from delay, caused by negligence after notice, provided he did not know that it might result when he made the contract. *Bradley* v. *Chicago Ry. Co.*, 68 N. W. Rep. 410 (Wis.).

The obligation to carry does not rest on contract, though the decision in the principal case might give one that impression. The carrier is bound to transport goods though he expressly refuses to take them. On the other hand he owes a duty to shippers only, not to all the world. A breach of it therefore is not a tort. The courts recognize this, and that there is no action specially fitted to enforce the carrier's obligation, by allowing suit in either assumpsit or case. In the principal case there was a breach of the duty to carry with reasonable speed, and when the carrier learns of additional cause for haste he should use corresponding care. If he negligently delays he violates his common law duty. The rule of damages in torts is therefore more appropriate than the rule in contracts. Cases in England and *dicta* in this country support the principal case, but the recent decisions in England are tending the other way. See 9 HARVARD LAW REVIEW, 215.

CONFLICT OF LAWS — GENERAL AND PARTICULAR DOMICIL. — A, having a domicil in Tennessee, went to Texas, which he proposed to make his home. He had in mind, however, no definite place as a local residence, but intended to live from time to time in different parts of the State. *Held*, that he immediately acquired a domicil in Texas. *Marks* v. *Marks*, 75 Fed. Rep. 321.

The case is interesting as deciding that a person may have a general State domicil, without being domiciled at any particular place in the State. This doctrine has sometimes been denied; Lord Fullerton's opinion in *Arnott* v. *Groom*, 19 Sc. Jur. 43, 45. But on principle the status of *general* domicil would seem entirely permissible under circumstances like those in the leading case. For the two requisites of domicil, the *factum* and the *animus*, the actual living and the intention to remain, are both present. Moreover, an argument in favor of this view is, that the only alternative is to invoke the "constructive" theory, and by a fiction set up a past domicil. Now domicil should be based, as far as possible, on facts rather than on legal fictions. The latter should be resorted to only in a case of necessity. And it is much more in accord with the real facts to regard a man's home as in that place where he is and expects to stay permanently, than as in some State in which he formerly resided, but with which he now has absolutely no connection. *In re Craignish*, [1892] 3 Ch. 180, 192.

The case may become a leading one, as the exact question which it raises seems never to have been decided before, at least in the United States. The current of opinion

of the best text writers, both in this country and in England, agrees with the results reached by the court. Jacob's Law of Domicil, § 133; Dicey's Conflict of Laws, 91–93.

CONSTITUTIONAL LAW — IMPAIRMENT OF OBLIGATION OF CONTRACTS. — A Rhode Island statute authorized any town to construct waterworks for the use of the town, and also contract with third parties for a water supply. The town of Westerly granted this right of constructing waterworks and supplying the town with water to the plaintiff, a corporation organized for such purpose. After the plaintiff had complied with all the requirements of the grant, the town passed a vote for the construction by itself of a waterworks plant. The plaintiff filed a bill to restrain the town from carrying out its vote. *Held*, that this action of the town, being taken under a State statute, was in effect action by the State. As such it was opposed to the provisions of the constitution of the United States, being a law impairing the obligation of the previous contract with the plaintiff. Plaintiff was consequently entitled to his injunction. *Westerly Waterworks* v. *Town of Westerly*, 75 Fed. Rep. 181.

This decision seems questionable, to say the least. The only positive act of the State legislature in reference to the question was passed previously to the town's contract with the plaintiff. For a State law to impair the obligation of a contract, it must be passed subsequently to the formation of such contract. (*Lehigh Water Co.* v. *Easton*, 121 U. S. 388.) And it is hard to see how a vote of a town under authority of a State statute can be considered a law of the State. It may be that the town is liable to the plaintiff for breach of contract; that would depend on the terms of the contract; but that is a very different matter from saying that a vote of a town can be a State law under the provisions of the Federal Constitution.

CORPORATIONS — BUILDING AND LOAN ASSOCIATIONS — USURY. — Under the usual statute allowing building and loan associations to make loans to members, it was provided that premiums paid for right of precedence in taking loans, although in excess of legal interest, should not be considered as making the loan usurious. *Held*, that the interest might be reserved at the highest rate permitted by law on the face of the note, although the premium was deducted from that amount and the difference only paid to the borrower. *Association* v. *Drummond*, 68 N. W. Rep. 375 (Neb.).

Looked at as a loan for the face of the note, out of which the borrower immediately pays the premium, there can be no logical objection to this decision, as in this case interest on the face of the note is merely interest on the actual loan. *Association* v. *Webster*, 25 Barb. 263. Or it may be considered a loan for the face of a note which is made up of two sums: first, an amount equal to the difference between the face of the note and the premium; secondly, an amount equal to the premium, which it is not necessary for the borrower to turn over to the association, as it would be immediately paid back to him. *Bowen* v. *Association*, 28 Atl. Rep. 67 (N. J.). But see, *contra* to the principal case, *Association* v. *Gallagher*, 25 Ohio St. 208, and *Association* v. *Blackburn*, 48 Iowa, 385, which seem to go on the ground that exceptions to usury laws accorded to building and loan associations should be strictly construed, — that the interest should be computed on the money actually loaned, and not on the sum bid for.

CORPORATIONS — REORGANIZATION — LIABILITY OF OLD CORPORATION FOR DEBTS OF NEW. — A mining corporation being in debt, its stockholders organized another company, which leased the property of the first and paid off all its existing debts. The same men controlled both companies at all times. *Held*, a mechanic's lien for work and materials furnished the new company could be enforced against the old company, the lessor of the premises. *Hatcher* v. *United Leasing Co.*, 75 Fed. Rep. 368.

The case proceeds on the ground that as to all outside parties there is no change of title, and the old company cannot escape from any liability by its fictitious lease to itself under another name. The case usually arises on an attempt to hold the new corporation for the liabilities of the old one, and the question then is, whether the new company is a revival of the old or a new and distinct creation, for in the latter case no liability attaches to the new company. In such cases the test is the legislative intent in conferring the new charter. 1 Thomp. Corp. § 256. But in the principal case there would seem to be no doubt as to the separate character of the two measured by this test, — the new one being chartered to lease the property of the old is a clear legislative recognition of their individuality. Though the grounds of the decisions seem at least doubtful, the case may well be supported as one of those where, by reason of the interest the lessor has in the improvements, the reversion is subject to the mechanic's lien. *Burkitt* v. *Harper*, 21 N. Y. Sup. Ct. 581; *Moore* v. *Jackson*, 49 Cal. 109.

CORPORATIONS — RIGHT TO PREFER CREDITORS. — *Held*, that when a corporation has ceased to carry on business and is insolvent, the directors have no right to pay some creditors in preference to others. *Allison* v. *The Bradt Printing Co.*, 37 S. W. Rep. 10 (Tenn.).

The weight of authority is perhaps opposed to the principal case, holding that a corporation is an artificial person, and like a person, should be able to prefer its creditors. Morowetz on Corp., § 802. In reply to this it is said, that the directors can only dispose of the company's funds as prescribed in the charter. When business ceases to be carried on, and the company is insolvent, it is an implied condition that the money shall be held as a fund for the benefit of creditors and stockholders. Unless it is absolutely necessary it is surely unwise to extend further the doctrine of preference, of doubtful advantage as exercised by individuals. If it is extended it would seem logically that directors might be able to prefer themselves.

CORPORATIONS — SUSPENSION OF MEMBERS. — Relator was a member of a voluntary incorporated organization owning property, its charter giving it a right of expulsion of members as might be directed in its by-laws. Having been charged and convicted by the board of directors, according to its by-laws, of an offence punishable by expulsion or suspension, relator attempted to compel his reinstatement by mandamus. *Held*, that under such circumstances the determination of the board of directors could not be reviewed. *Board of Trade* v. *Nelson*, 44 N. E. Rep. 743 (Ill.).

The decision is undoubtedly correct. The relator should be held bound by the judgment of a tribunal authorized by the charter of the corporation to which he has voluntarily submitted himself upon becoming a member of the corporation, when that tribunal acts in good faith and after notice and opportunity for full hearing. *Com.* v. *Pike Benev. Soc.*, 8 W. & S. 247. It is probable that this decision, together with that in *Pitcher* v. *Board of Trade*, 121 Ill. 412, holding that chancery will not interfere in such cases, will put an end to a vast amount of litigation in the courts of common law and of equity in Illinois, attempting to subject the power of expulsion by such corporations, regularly exercised, to the revision of the courts.

CRIMINAL LAW — EVIDENCE. — *Held*, that on a trial for murder, evidence of the violent and dangerous character of the deceased might be introduced by defendant to prove self-defence and to show that defendant acted under such circumstances as would cause a reasonable man to believe himself in imminent danger, but that it was admissible only where it gave significance to the conduct of deceased at the time of the killing; and defendant must first show such conduct by deceased as, though innocent if considered independently of the violent character of deceased, yet when considered in connection with such character, would arouse a reasonable belief of imminent peril; that defendant might lay the basis for the introduction of such testimony as to character by his own evidence as to the conduct of deceased. *Hart* v. *State*, 20 So. Rep. 805 (Fla.).

The decision represents the weight of authority upon this exception to the general rule that it is inadmissible for the defendant to put the character of deceased in issue. The admission of such evidence, after a foundation for it has been laid by the preliminary proof demanded, appears proper as showing the belief of defendant as to the probability of attack, and its character. *Hurd* v. *People*, 25 Mich. 405. Massachusetts, however, refuses to admit such evidence. *Hilliard* v. *Com.*, 2 Gray, 294. It may be questioned if the last decision would stand should the point again be raised, as a former decision upon an allied matter, viz., a refusal to allow the introduction of proof of the extraordinary muscular development of deceased, in *Com.* v. *Mead*, 12 Gray, 167, was overruled in *Com.* v. *Barnacle*, 134 Mass. 215.

CRIMINAL LAW — FORMER ACQUITTAL. — *Held*, that a general verdict of acquittal after plea of not guilty to an indictment charging murder, not objected to before verdict, is a bar to a second indictment for the same offence. *Ball* v. *U. S.*, 163 U. S. 622; 16 Sup. Ct. Rep. 1192. See NOTES.

DEEDS — ACKNOWLEDGMENT BEFORE INTERESTED OFFICER. — Plaintiffs, husband and wife, executed a trust deed of land in favor of defendant corporation, as security for a loan. Bill to enjoin foreclosure on the ground that the acknowledgment, which was before a notary, who was also a director in defendant corporation, was void. Injunction refused. *Held*, that such an acknowledgment, while open to grave suspicion of fraud or undue influence, is not void *per se*. *Cooper* v. *Hamilton Loan Association*, 37 S. W. Rep. 12 (Tenn.).

Taking a married woman's acknowledgment of her deed is commonly considered a judicial, not a ministerial, act. Such acknowledgments before an interested party are therefore in most States held void. In Tennessee, however, even a judgment rendered by a related or interested party is not void (*Holmes* v. *Eason*, 8 Lea, 754), and the same rule is naturally followed in regard to acknowledgments. While this may perhaps sufficiently protect the married woman from fraud and undue influence, it must be admitted that such acts on the part of an interested officer are to be deprecated, and can be checked most effectively by treating them strictly as void.

EQUITY — JURISDICTION IN CASE OF MENTAL DISABILITY. — *Held*, that equity will entertain a suit by the next friend of a person of weak mind, incapacitated by age or infirmity, though not in such condition as to be adjudged a lunatic by the special tribunal provided for such purpose, to set aside conveyances obtained from such person by the undue influence and fraud of others, although the nominal plaintiff denies the incapacity and repudiates the acts of those bringing the suit. *Edwards* v. *Edwards*, 36 S. W. Rep. 1080 (Tex.).

The jurisdiction of equity to protect the property of persons of weak mind, who have not been found to be *non compotes mentis*, is well established. *Light* v. *Light*, 25 Beav. 248. The chancellor will reinstate a bill by next friend, to set aside a conveyance obtained by fraud from one of weak mind, although the grantor has caused the bill originally filed for that purpose by him to be dismissed. *Owing's Case*, 1 Bland Ch. 370. The principal case seems to have carried this wholesome doctrine of equity to its fullest extent by applying it to a case where there has been a distant adjudication against the mental unsoundness of the grantor.

INSOLVENCY — NATIONAL BANKS — EFFECT OF COLLATERAL HELD BY CREDITORS. — A creditor of an insolvent national bank, whose claim was secured by collateral, made proof against the bank to the full amount of his claim. *Held*, that subsequent collections made by the creditor on his collateral need not be deducted from the amount of his claim previously proved against the bank. *Merrill* v. *First National Bank of Jacksonville*, 75 Fed. Rep. 148.

Except where the matter is regulated by bankruptcy statutes, this case represents the general law. The court follow the case of *Chemical National Bank* v. *Armstrong*, 59 Fed. Rep. 372, where it was held that it made no difference whether collection on the collateral took place before or after proof of the claim. Although there is a conflict of authority on collections made before proof, the result seems correct. See 8 HARVARD LAW REVIEW, 61, and *Allen* v. *Danielson*, 15 R. I. 480. There seems to be an analogy between the principal case, and cases like *In re Souther*, 2 Lowell, 320, and *Ex parte de Tastet*, 1 Rose, 10, where it is held that full proof may be made against a party primarily liable on a bill or note, although there has been part payment by one secondarily liable. In the last cases the security is personal, while in the principal case the security is real.

INSURANCE — CHANGE OF OWNERSHIP. — *Held*, that the purchase of the fee by a mortgagee is not such an alienation as will invalidate an insurance policy taken out by the mortgagor for the benefit of the mortgagee with condition against "change of ownership." *Dodge* v. *Hamburg-Bremen Fire Ins. Co.*, 46 Pac. Rep. 25 (Kan.).

In general a mortgage is not considered an alienation within the meaning of such conditions. May on Ins., § 269. It is evidently considered that the question whether the mortgagor or the mortgagee has the title is immaterial in applying the condition. But when the mortgagee takes possession, or acquires full ownership under foreclosure, it is generally thought that an alienation is effected. *Macomber* v. *Cambridge Ins. Co.*, 8 Cush. 133. This seems the correct view. In *Bragg* v. *Ins. Co.*, 25 N. H. 289, where the mortgagor insured for the benefit of the mortgagees, as here, it was held that as the interest remained with the party liable for the premiums, a foreclosure was not an alienation; but that decision seems as unsatisfactory as that in the principal case.

INSURANCE — INTERPRETATION OF CONDITIONS. — A fidelity insurance policy required that particulars of loss be furnished within three months, and that any action be brought within twelve months from discovery of loss. A defalcation was discovered while the assured, a national bank, was in the hands of a receiver, and the accounts were being taken by the comptroller. When the bank was restored, the time of limitation under the policy had elapsed. *Held*, that the omission of the receiver to sue would not be imputed to the bank; and that the failure to perform the condition, having been caused by the receivership and resulting from the very event insured against, would not prevent recovery. *Jackson* v. *Fidelity Co.*, 75 Fed. Rep. 359.

Throughout the receivership, the corporate entity existed as before (High on Receivers, 3d ed., § 358); so whoever may have been the officer to sue, an action was possible from the discovery of the defalcation. And as full particulars mean only the best under the circumstances (Porter on Ins., 2d ed., 191), both conditions could have been complied with notwithstanding the receivership. If, however, full particulars were necessary, and to obtain them within the time became impossible, while it has been held that an express time must give way to a reasonable time (May, Ins., 2d ed., § 217; *Tripp* v. *Society*, 140 N. Y. 23), it must be remembered that the contract was made by the parties and not by the court, and recovery was contemplated for such damage alone as might not be excluded by the conditions. *Routledge* v. *Burwell*, 1 H. Bl. 254; *Johnson* v. *Ins. Co.*, 112 Mass. 49.

JUDGMENT — OPENING DEFAULT — NEGLECT OF ATTORNEY. — *Held*, that a default occasioned by the negligence and incompetence of the defendant's attorney may be opened. *Gideon* v. *Dwyer*, 40 N. Y. Supp. 1053.

In most American jurisdictions the courts, exercising, at common law or by statute, a discretionary power over their own judgments, have refused to set aside a judgment on the sole ground of the neglect, carelessness, or mistake of the attorney, the act or omission of the attorney being regarded, on principles of agency, as the act or omission of the client. Black on Judgments, § 341. In a few States, however, and among them New York and North Carolina, the negligence of the attorney is held to be a sufficient reason for setting aside a judgment, provided the client himself was not directly at fault. See *Gwathney* v. *Savage*, 101 N. C. 103; *Elston* v. *Sehilling*, 7 Rob. (N. Y.) 74; *Meacham* v. *Dudley*, 6 Wend. 514. Justice certainly requires relief in some cases of default permitted through the negligence and incompetence of an attorney, but the New York courts seem to be somewhat too lenient. The principles they apply in this matter are indistinctly stated in *Levy* v. *Joyce*, 1 Bosw. 622.

JURISDICTION — ACTION FOR INJURY TO LAND. — *Held*, that an action will lie in one State to recover damages for injuries to land situated in another State. *Little* v. *Chicago, St. P., M. & O. R. R. Co.*, 67 N. W. Rep. 846 (Minn.).

The court in the above case acknowledge that their decision is opposed to overwhelming authority, both in the United States and in England, but they assert that such an action is in its nature transitory rather than local, and that the rule sustained by the authorities is "purely technical, and in practice often results in a total denial of justice." The House of Lords in a late case, *British South Africa Co.* v. *Companhia de Moçambique*, [1893] App. Cas. 602, reached a different conclusion from that of the Minnesota court. It was there held, overruling the previous decision of the Court of Appeal in [1892] 2 Q. B. 358, that an action of trespass to land situated in a foreign country could not be maintained. The decision was rested on the ground, that as such an action might involve an inquiry into titles to land in foreign countries, no courts but those of such foreign country had jurisdiction. This result seems correct in principle, and certainly shows an almost universally accepted rule of law. *Livingston* v. *Jefferson*, 1 Brock. 203. *Allin* v. *Lumber Co.*, 150 Mass. 560.

PARTNERSHIP — ENTITY THEORY. — Petition to set aside a sale made by a partnership which owed the petitioner money, on the ground that some of the creditors were thereby preferred. *Held*, "that a partnership is a distinct entity, having its own property, debts, and credits; and, for the purposes for which it is organized, it is a person, and as such is recognized by the law." Consequently it has a right to prefer its creditors. *Campbell* v. *Farmers' Bank*, 68 N. W. Rep. 344 (Neb.).

The sentence quoted from the opinion has become a catch phrase in the Nebraska courts, the judges making it the basis of their decisions. See *Roop* v. *Herron*, 15 Neb. 73; *Deitrich* v. *Hutchinson*, 20 Neb. 52; *Richards* v. *Laveille*, 44 Neb. 38. Such reasoning will accomplish what the legislatures and courts of equity have been attempting for more than a century to effect, viz., the adaptation of law to the custom of merchants. It will be held that the firm owns the capital and may be sued by any partner, while the death of a partner will not necessitate a dissolution. The books will show whether property belongs to the firm, or is rented to it by a partner, and the firm creditors will have as large a share as a personal creditor of the assets of a partner. The courts are slowly recognizing the principle involved in this case. See Parsons on Partnership, 4th ed., §§ 4 and 5.

PARTNERSHIP — PARTNER'S INTEREST IN FIRM PROPERTY. — One of the members of a firm made an assignment for the benefit of creditors; his assignee sold the assigning partner's interest in the firm. Subsequently the old firm effected insurance on a building which had been partnership property. *Held*, notwithstanding the previous assignment of the interest of one of the partners, the old firm remained the sole and unconditional owners of the firm property. *Wood* v. *Insurance Co.*, 44 N. E. Rep. 80 (N. Y.).

The decision follows logically from the mercantile conception of a partnership. "The property or effects of a partnership belong to the firm and not to the partners." *Bank* v. *Carrollton R. R.*, 11 Wall. 624. The partner's individual interest is an interest in the firm, not an interest in the firm's property. "One coming into the right of a partner comes into nothing more than interest in the partnership." *Taylor* v. *Fields*, 4 Ves. Jun. 396. Hence, in the principal case the transferee of the assigning partner did not become a part owner of the firm property.

PERSONS — HUSBAND AND WIFE — RIGHTS OF HUSBAND'S CREDITORS. — An insolvent debtor employed himself as an inventor. The patents which he obtained, he assigned to his wife for the benefit of a business which she carried on in her own name. A judgment creditor of the husband filed a bill to have such of the wife's property as

was engaged in this business subjected to payment of her husband's debts *Held*, a husband in rendering to his wife in her business more help than he would ordinarily give her as head of the family, makes such business his own as regards his creditors. *Talcott v. Arnold*, 35 Atl. Rep. 532 (N. J.).

If actual fraud was found in the present case, such as to make the wife's business in reality that of the husband, the result reached is undoubtedly correct. On the other hand, it seems to be a sound rule of law, that, as the earning power and labor of an insolvent are not assets to his creditors, he may, if he does so *bona fide*, work in his wife's employ without subjecting her business to his creditor's claims. *Abbey* v. *Deyo*, 44 N. Y. 344; *Mayers* v. *Kaiser*, 85 Wis. 382. Though some of the court's language seems opposed to this last proposition, the case, on its facts, seems to have been rightly decided. The husband here did something more than work for his wife. By his labor he obtained certain property, namely, the patents. By the transfer of that property to his wife for the benefit of her business, he gave his creditors the right to subject such property of the wife's as was the result of the patents to the payment of their claims.

PROPERTY — ADVERSE POSSESSION. — The defendant had had possession of land for ten years, but other parties had entered and cut hay, their entries not being sufficient to break the continuity of the defendant's possession. *Held*, that the possession must be adverse to the whole world, not merely to the plaintiff who sues for the land. *Bracken* v. *Union Pacific R. R. Co.*, 75 Fed. Rep. 347.

The language of the court is ambiguous, and it is difficult to discover its meaning. As no question of successive disseisin is raised, the most plausible interpretation is that, in order to bar the true owner's right, the defendant must not have allowed parties to enter on the land during his occupancy. But if defendant's possession was continuous, and the jury did not find that the entries of the third parties were interruptions of it, then such entries were trespasses for which the defendant, being in possession, might have recovered damages. They did not amount to new disseisins. The facts of the case show that the plaintiff was out of possession for more than ten years (the statutory period in Nebraska), and that the defendant had continuous open adverse possession for that time. That the court should require his possession to have been also exclusive appears to be erroneous.

PROPERTY — QUITCLAIM DEED — PURCHASER FOR VALUE. — *Held*, that the holder of a quitclaim deed, properly recorded, who purchased in good faith and without notice of a prior unrecorded conveyance, takes title in preference to the grantee under such unrecorded conveyance. *Scholt* v. *Dosh*, 68 N. W. Rep. 346 (Neb.).

This case is interesting as showing what appears to be a tendency to drift away from earlier cases which hold that a quitclaim deed conclusively charges the grantee with notice of outstanding equities, including prior unrecorded conveyances. *Steele* v. *Sioux Valley Bank*, 79 Iowa, 339. The cases are hopelessly in conflict on this point, but the principal case represents the better view. It is to be noted that most of the authority *contra* to the principal case is very largely based on *dicta* in the United States Supreme Court cases, notably *May* v. *Le Clare*, 11 Wall. 217, which have been discredited by the more recent case of *Moelle* v. *Sherwood*, 148 U. S. 21.

SALES — BONA FIDE MORTGAGEE OF PURCHASER. — A purchased a chattel, giving in payment his note, indorsed by B as surety. It was agreed that property in the chattel should be in B until A paid the note. A, being in possession, purchased goods of C and agreed to give C a mortgage on the chattel in question as security. After delivery of the goods, but before the execution of the mortgage, C learned of the agreement between A and B. *Held*, that C could foreclose, and that his claim to the proceeds of sale should be prior to B's, though B had been compelled to pay the note given by A. *Wood* v. *Evans*, 25 S. E. Rep. 559 (Ga.).

If A had the legal title which the court seems to assume, the result reached is questionable. By the great weight of authority, C, having notice before the execution of the mortgage, should not have been regarded as a *bona fide* mortgagee. The view *contra* to the principal case was applied to a sale by a trustee as early as 1692. *Saunders* v. *Dehen*, 2 Vern. 271. So, a purchaser who receives notice of an equity before the indorsement of a bill is made to him, but after delivery and payment, is not a *bona fide* purchaser. *Lancaster Bank* v. *Taylor*, 100 Mass. 18; *Goshen Bank* v. *Bingham*, 118 N. Y. 349. The principal case, however, does not stand alone in this point. *Youst* v. *Martin*, 3 S. & R. 423.

If, however, B acquired the legal title, C's priority may have been properly upheld by the court, on their construction of a Georgia statute, requiring B to record his claim.

TAXATION — SITUS OF INTANGIBLE PROPERTY. — In three cases arising under an inheritance tax law, the New York Court of Appeals *held*, that the legislature has

power to impose such a tax on the stock, but not on the bonds, of a domestic corporation owned by a non-resident decedent and bequeathed to a non-resident, the certificates being kept out of the State, *In re Bronson*, 44 N. E. Rep. 707; to impose such a tax on the bonds of a foreign corporation, owned and bequeathed in like manner, when the bonds are actually on deposit within the State, *In re Whiting's Estate*, ib. 715; to impose such a tax on a non resident's deposit in a New York trust company, *In re Hondayer's Estate*, ib. 718. See NOTES.

TORTS — ASSAULT — REASONABLE FEAR. — Defendant fired a revolver near the plaintiff but not at him, intending merely to frighten him, not to do bodily harm, so that plaintiff was frightened, became sick, and suffered physically. *Held*, that defendant was not liable. *Degenhardt* v. *Heller*, 68 N. W. Rep. 411 (Wis.).

The court here proceed upon the ground that an intent merely to frighten is not a sufficient wrong on the part of the defendant to make him liable, and for support a number of definitions are cited to the effect that an intent to inflict bodily harm is a necessary element of assault. But this view seems opposed to the better opinion. It is well recognized law that the pointing of a pistol by one who knows it to be unloaded with intent only to frighten is enough to make the defendant liable. In *Com.* v. *White*, 110 Mass. 407, it was held that the ruling was properly refused that defendant must have had the intent to inflict bodily harm. On this point the decision in the principal case seems wrong, and the only ground on which it might be supported is that the plaintiff's injury was not such as the law would notice, namely, that he was not put in fear of bodily harm, but was frightened merely by the noise of the explosion. "The essence of the wrong is putting the man in present fear of violence." Pollock on Torts, 4th ed. 198.

TORTS — CONTRACT WITH THIRD PARTY — LIABILITY FOR RESULTING DAMAGE. — Under an agreement with the defendant, a railroad company constructed a switch to defendant's mills along a street in front of plaintiff's house. *Held*, that defendant was liable for injury done to property owners. *Patton* v. *Olympia Door & Lumber Co.*, 46. Pac. Rep. 237 (Wash.).

The defence in this case was, that it was not the defendant who constructed and ran the switch, but the railroad company. But the court answered this objection by saying that the railroad company ran the cars under an agreement with the defendant to do so and for his benefit. How far this principle of liability might be extended is a question of some interest, but there seems to be little doubt that the court was correct in going as far as it did.

TORTS — NEGLIGENCE — LEGAL CAUSE. — Defendant railway negligently blocked the street with a freight train. Plaintiff in trying to pass around the engine, tripped while still in the street, and fell, breaking her wrist. *Held*, that defendant's negligence was not the legal cause of the injury, since the fall was "neither the natural nor the usual result to be expected." *Enochs* v. *Pittsburg Ry. Co.*, 44 N. E. Rep. 658 (Ind.).

Defendant, a gas company, knowingly allowed its mains to fall out of repair, so that gas escaped through the earth into a basement and exploded, killing plaintiff's intestate. *Held*, that defendant's negligence was the legal cause of the explosion, which was "one of the natural results," one "which the defendant was bound to anticipate." *Alexandria Co.* v. *Irish*, 44 N. E. Rep. 680 (Ind.).

These cases are clearly right. It is to be observed, however, that between them lies the class of cases where the result, while following in the course of nature, is not such as any one would consider probable. On such cases the Indiana court may some time find it necessary to draw a sharper line of distinction.

TORTS — PHYSICAL SUFFERING RESULTING FROM MENTAL SHOCK. — Plaintiff, through mental excitement and fright, became incapacitated for work. *Held*, he could recover under the terms of a policy insuring him absolutely for all accidents, however caused, occurring in the fair and ordinary discharge of his duty. *Pugh* v. *London, Brighton and South Coast Railway Co.*, [1896] 2 Q. B. 248. See NOTES.

TRUSTS — RIGHT TO CONTRIBUTION AS BETWEEN CO-TRUSTEES — STATUTE OF LIMITATIONS. — The plaintiff, who was trustee of a marriage settlement, allowed the trust fund to be in the hands of his co-trustee, the defendant, for investment. The defendant intrusted the whole fund to an "outside" stockbroker, who applied a portion of it to his own use. In an action by the plaintiff and the infant *cestuis*, defendant claimed contribution against the plaintiff trustee. The stockbroker was employed by defendant in 1885. *Held*, that the right to contribution creates a debt, but that such right does not come into existence until the *cestui* has obtained judgment against the trustee so claiming contribution. Consequently, defendant's claim

arose upon the date of this judgment and not before. *Robinson* v. *Harkin*, [1896] 2 Ch. 415.

The court simply applies to a suit between co-trustees the principle which is recognized in suits between co-sureties. *Wolmershausen* v. *Gullick*, [1893] 2 Ch. 514. But the decision is important, for there is little or no authority on the point in this country. There appears to be no reason to doubt the soundness of the decision.

REVIEWS.

STUDIES IN THE CIVIL LAW AND ITS RELATIONS TO THE LAW OF ENGLAND AND AMERICA. By William Wirt Howe, of the Bar of New Orleans: Sometime a Justice of the Supreme Court of Louisiana, and W. L. Storrs, Professor of Municipal Law in Yale University for the Year 1894. Boston: Little, Brown, & Co. 1896. pp. xv, 340.

This book is the outcome of a Course of Lectures delivered before the Law School of Yale University by one of the most eminent of Louisiana lawyers.

The plan of the work is excellent. What has been written in English of late years on the Roman Law is largely of that Law as a dead thing; it has been studied as the Latin grammar is studied; indeed, it seems as if it were the archaic forms revealed to us by Gaius, which have especially attracted writers and students. To have the Roman Law as the vivifying principle of great legal systems of to-day discussed in the English language by a practising civilian, is to have made an important addition to our legal literature. But the gain is doubled by the fact that Judge Howe is not only a civilian, but a common law lawyer, and has thus been able to give us many interesting and fruitful comparisons between the Roman and Civil Law, and, what is of even more moment, has known how to approach the problems of the latter Law through the medium of actual decisions in the way that is entitled to gain them the most attention and respect from those of us who have been bred in the methods of the Common Law.

The book shows the marks of its original form of lectures. It is very clear and pleasant reading, with something of the liveliness of a spoken discourse; on the other hand, if it had been conceived originally as a printed book, the order of thought would probably have been closer, and the general prospective better preserved. Doubtless no one knows this better than Judge Howe, and we trust the success of these Studies, as he modestly names them, may justify a new edition, in which there shall be some omissions in the beginning and ending chapters, and some additions in the body of the work. J. C. G.

JURISDICTION, PRACTICE, AND PECULIAR JURISPRUDENCE OF THE COURTS OF THE UNITED STATES. By Benjamin Robbins Curtis, LL. D. Second Edition, Revised and Enlarged by Henry Childs Merwin. Boston: Little, Brown, & Co. 1896. pp. xxvi, 341.

If this little volume had nothing else to recommend it, its convenient size and neat binding would bring it readers. It is a pleasure to find a law book in so convenient a form.